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May 16, 2018

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Lawsuit Claims AG Review of Ballot Measures is Unconstitutional Sovereign Immunity and Casino Groups Sue Over Rejections

A second group wanting access to the November ballot has filed a [lawsuit](#) against Arkansas Attorney General Leslie Rutledge after she rejected the title and wording of their proposed constitutional amendment.

Time is running out for groups seeking to put constitutional amendments on the ballot. There is a June 6 deadline to publish proposed ballot titles in a newspaper and a July 6 deadline to collect and submit 84,859 voter signatures.

The Arkansas Supreme Court rejected an attempt last month by [Driving Arkansas Forward](#) to force the Attorney General to approve its ballot title for a constitutional amendment that seeks to legalize casinos in certain parts of the state.

Now a second group has filed a similar lawsuit after Rutledge rejected the title and text of a proposed constitutional amendment that would allow legislators to pass legislation that include a waiver of the state's immunity to lawsuits.

The lawsuit filed by Alex Gray on behalf of the [Committee to Restore Arkansans' Rights](#) points out that Rutledge has rejected every proposed ballot title since the November 2016 election. She did approve one ballot title in October 2016 that allowed supporters of the [Arkansas Term Limits Amendment](#) to move forward in collecting signatures.

Ballot issue groups can't collect signatures until the Attorney General approves their proposed title and text of their measures. Rutledge has found issues with the text in all the proposals, saying the Arkansas Supreme Court has set a high standard for certifying proposals and she was upholding those standards.

The Committee to Restore Arkansans' Rights contends that a state law requiring the Attorney General to approve ballot titles is unconstitutional. They point out that [Article 5](#), Section 1 of the Arkansas Constitution, which allows people to propose constitutional amendments, states "no legislation shall be enacted to restrict, hamper or impair the exercise of the rights herein reserved to the people."

The group says their ballot title is clear, concise and not misleading as required by [Ark. Code Ann. 7-9-107](#) but that Rutledge is restricting, hampering or impairing their right to propose the amendment through

her refusal to approve or certify the ballot title or substitute a more suitable title. Rutledge has twice rejected the Committee to Restore Arkansans' Rights proposed amendment.

A hearing on the case has been set for 10 a.m. Friday in the fifth Division of the Pulaski County Circuit Court in Little Rock.

Gray, who also represents Driving Arkansas Forward, filed a request that the casino group join in on this lawsuit after Rutledge rejected its proposed ballot title and text for the fifth time this month.

Voters in November will decide the fate of two constitutional amendments proposed by the legislature, [Issue 1 \(SJR8\)](#) and [Issue 2 \(HJR1016\)](#).

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The [Public Policy Center](#) has published nonpartisan fact sheets on Arkansas' statewide ballot issues since 2004. We welcome your questions at publicpolicycenter@uaex.edu. Follow us on [Facebook](#) and [Twitter](#) and look for our posts with the hashtag #ARballot.

Did you know?

In 1956, in an early case involving the Attorney General's review of ballot issues, the Arkansas Supreme Court rejected an attempt to force the Attorney General and Secretary of State to approve a ballot title for a referendum on the statewide ballot.

Supporters had submitted the wording of the referendum to the Attorney General initially for approval, received approval for the petition and collected signatures. However, later the Attorney General advised the Secretary of State not to certify the measure for the ballot because the petition didn't designate a ballot title or popular name. The court upheld the Attorney General's decision in *Washburn v. Hall*.

Source: [CourtListener](#)

Constitutional Amendments From the Legislature

Legislators are able to refer up to three constitutional amendments to the voters every general election. These two proposals will be on the Nov. 6, 2018 ballot:

[Issue 1 \(SJR8\)](#) - An Amendment Concerning Civil Lawsuits and the Powers of the General Assembly and Supreme Court to Adopt Court Rules.

Read [Issue 1 \(SJR8\)](#)

Sponsor: [Sen. Missy Irvin](#)

[Issue 2 \(HJR1016\)](#) - A Constitutional Amendment Adding as a Qualification to Vote that a Voter Present Certain Valid Photographic Identification When Casting a Ballot In Person or Casting an Absentee Ballot.

Read [Issue 2 \(HJR1016\)](#)

Sponsor: [Rep. Robin Lundstrum](#)

Looking Forward

Potential Ballot Issues from the Public

The Attorney General is responsible for reviewing the language and titles of potential ballot issues submitted to voters by the public. Ballot issue groups can circulate petitions only after the Attorney General verifies that the ballot title and popular name honestly, intelligibly and fairly describe the purpose of a proposed constitutional amendment or act. The following are recent Attorney General opinions regarding potential ballot issues:

Rejected Ballot Proposals

May 9, 2018 - An Amendment to Authorize Four Licenses to Permit Casino Gaming at Casinos, One Each in Crittenden (to Southland Racing Corporation), Garland County (to Oaklawn Jockey Club, Inc.), Pope, and Jefferson Counties - A proposal seeking to legalize casinos in specific parts of Arkansas was rejected because of ambiguities in the proposal, such as whether a commission overseeing the casinos would be "required" to issue licenses or whether they were "authorized" to issue licenses, according to [Opinion No. 2018-052](#). Alex Gray of Little Rock submitted the measure.

This was the third time this proposal with this popular name was rejected. See [Opinion No. 2018-035](#) (April 16, 2018), [Opinion No. 2018-029](#) (March 29, 2018). Gray has had similar proposals with different popular names also rejected two times. See [Opinion No. 2018-021](#) (March 12, 2018) and [Opinion No. 2018-001](#) (Jan. 25, 2018).

May 8, 2018 - An Amendment to Allow Four Casinos to Operate in Arkansas, One Each at a Specifically Designated Location Within Each of the Following Four Counties: Benton County, Boone County, Miller County, and Pulaski County - A proposal seeking to legalize casinos in specific parts of Arkansas was rejected in part because of a "fundamental problem" regarding "ownership of the properties your proposal identifies as the locations for the casinos in Arkansas and who stands to benefit if your proposal were to be adopted," according to [Opinion No. 2018-049](#).

This was the second time this proposal was rejected. See [Opinion No. 2018-032](#) (April 10, 2018). Randall Bynum of Little Rock submitted the measure.

May 7, 2018 - The Arkansas Citizens' Redistricting Commission - A proposal seeking to create a seven-member commission responsible for creating Arkansas' congressional and state legislative districts was rejected because of ambiguities in the text that were subjective, according to [Opinion No. 2018-050](#). One example was the requirement that commissioners be "committed to applying the provisions of this section in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process."

This is the third time this proposal was rejected. See [Opinion No. 2018-036](#) (April 20, 2018), [Opinion No. 2018-019](#) (March 8, 2018). David Couch of Little Rock submitted the measure.

April 27, 2018 - An Act to Increase the Arkansas Minimum Wage - A proposal seeking to increase the state's minimum wage from \$8.50 to \$11 by 2021 was rejected because voters could possibly be confused by the proposal's language and think the law would apply to every hourly wage-earner and because the words "employer" and "employee" were not defined, according to [Opinion No. 2018-043](#). David Couch of Little Rock submitted the measure.

April 23, 2018 - The Arkansas Hemp and Cannabis Amendment - A proposal to legalize the cultivation, manufacturing, distribution, sale, possession and use of the cannabis plant and products derived from it was rejected because of ambiguities in the proposal's text that were similar to a past proposal already rejected, according to [Opinion No. 2018-037](#).

This was the second time this proposal was rejected. See [Opinion No. 2016-110](#) (Nov. 4, 2016). Robert L. Reed of Dennard submitted the measure.

Ballot Proposals Approved for Signature Gathering

Oct. 28, 2016 - Arkansas Term Limits Amendment - A proposal to reduce the number of years a state senator or representative can serve in office was certified for signature gathering, according to [Opinion No. 2016-105](#). The proposal would institute six-year terms for representatives and eight-year terms for senators, with a maximum of 10 years total. The proposal would return Arkansas' term limits to what they were before a voter-approved change in 2014 that extended terms. Thomas Steele of Little Rock submitted the measure.

Know of a potential ballot issue?

E-mail the information to publicpolicycenter@uaex.edu or call Kristin Higgins at 501-671-2160.

You can find past newsletters and ballot issue fact sheets at

<http://www.uaex.edu/ballot>



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- Increase citizen knowledge, awareness and understanding of public issues;
- Enhance public participation in decisions regarding public issues and
- Help citizens craft, evaluate and implement alternative solutions to public issues.

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